IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRP.No. 1848 of 2001(D)

C.A.3/99 IN OS.345/1977 of I ADDL.SUB COURT, THRISSUR
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REVN. PETITIONER/PETITIONER/PLAINTIFF:

STATE BANK OF INDIA,REPRESENTED BY THE CHIEF MANAGER, TRICHUR BRACH, TRICHUR.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS/RESPONDENTS/DEFENDANTS:
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1. ENAMEL INDUSTRIES LTD., T.C.HOUSE, TRICHUR.

2. INCOME TAX OFFICER, A WARD, TRICHUR.

3. SALES TAX OFFICER, IIND CIRCLE, TRICHUR.

SR2 BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT
R3 BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN J.

C.R.P.No.1848 2001

Dated this the 13th day of July, 2007

O R D E R

This revision petition is filed against the order in C.A.No.3/99 in O.S.No.345/77 on the file of the Sub Court, Trichur. Petitioner is the State Bank of India, Trichur Branch. O.S.No.345/77 is a money suit instituted against the lst respondent and others. The co-defendants however are not parties to the application. The suit was eventually decreed in favour of the petitioner/plaintiff. During the pendency of the proceedings plaint B schedule movables is stated to have been attached to be sold and the sale proceeds were deposited in the court. However, no orders were passed as regards the deposit so made in the court. The present application was filed by the plaintiff for issuing a cheque for a sum of Rs.1,34,004/- so deposited in court in favour of the petitioner. The court below dismissed the application noticing the following aspects:

1) There is no order or judgment for disbursing the said amount in favour of the petitioner.
2) The omission to array defendants 3 to 12 in the present application is the main ground for dismissing the application.

It is also stated that it is not known whether the decree could have been executed for realising the entire decree amount.

2. The learned counsel for the petitioner challenges the order mainly contending that out of an amount of Rs.5,19,251.86 deposited in the court the petitioner had already moved check application twice and an amount of Rs.3,67,699/- was already withdrawn by him as per the check issued. This application is filed only for the balance amount now lying in deposit. According to the petitioner, the balance amount as per the decree to be realised is over ten lakhs. The lst defendant, who is the principal debtor, though was served with notice, did not contest the application. Movables belonging to the lst respondent were attached and sold. Earlier applications filed by the Income Tax and Sales Tax Authorities claiming the amount were rejected. Those orders have become final. In such circumstances and in the interest of justice, the court below ought to have allowed the check application as prayed for. The learned counsel appearing for the Income Tax Department submittred that he has already filed a statement showing the amount due towards income tax from the lst respondent. However, it is an undisputed fact that the Income Tax Department filed a claim petition before the Sub Court against the issuance of a check and that was rejected. The Sales Tax Department also

filed a claim petition, which was also dismissed. No challenge thereto was made. Admittedly, both the Income Tax and Sales Tax Departments were parties to the present application. It is not seen that objections are raised by respondents 2 and 3 herein. In such circumstances, in the interest of justice and considering the fact that the petitioner is a public sector undertaking and who is the plaintiff in the suit and in the absence of any contest to the present application, the application could be allowed subject to certain terms.

3. Accordingly, I direct the court below to re-consider the application and to issue check as prayed for subject to the condition that the petitioner shall file a surety bond as contemplated under Rule 370(1) (c) of the Civil Rules of Practice. In case it is found that anybody has got a valid claim over this amount, the petitioner will bound to re-deposit the amount, as and when directed by the court below.

C.R.P. is allowed as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1848 OF 2001

O R D E R

13th July, 2007